

AMENDED IN SENATE MAY 1, 2003

AMENDED IN SENATE APRIL 7, 2003

SENATE BILL

No. 1004

Introduced by ~~Senator~~ *Senators Soto and Romero*

(Coauthor: Senator Machado)

(Coauthors: Assembly Members Calderon and Firebaugh)

February 21, 2003

An act to add Chapter 8.5 (commencing with Section 13610) to Division 7 of the Water Code, relating to perchlorate.

LEGISLATIVE COUNSEL'S DIGEST

SB 1004, as amended, Soto. Perchlorate.

(1) Existing law, the Porter-Cologne Water Quality Control Act, with certain exceptions, requires a person who causes or permits any oil or petroleum product to be discharged in any waters of the state, or where it may be so discharged, to immediately notify the Office of Emergency Services. The act makes any person who fails to provide the notice guilty of a misdemeanor that is punishable by a fine of at least \$500, and not more than \$5,000, for each day of failure to notify.

The act requires each California regional water quality control board, every 3 months, to publish and distribute to all public water system operators within the region a list of discharges of MTBE that occurred during the prior 3-month period and a list of locations where MTBE was detected in the groundwater within the region.

This bill, with certain exceptions, would require a person who causes or permits perchlorate to be discharged in any waters of the state, or where it may be so discharged, to immediately notify the State Water Resources Control Board. The bill would make a person who fails to

provide that notice guilty of a misdemeanor that is punishable by a fine of not less than \$500, or more than \$5,000, for each day of failure to notify. Because the failure to notify in accordance with these provisions is a crime, this bill would impose a state-mandated local program by creating a new crime.

The bill, on or before January 1, 2005, would require an owner or operator of a storage facility that has stored in any calendar year since January 1, 1950, over ~~375~~ 500 pounds of perchlorate to submit to the state board certain information relating to that storage. ~~The bill would require the state board, on or before June 1, 2004, to commence a field-based research program to determine the probability and environmental significance of discharges of perchlorate from past and present perchlorate storage facilities. The bill would require the state board to adopt regulations relating to the operation of perchlorate storage facilities, as defined.~~ The bill would require each regional board to publish certain information relating to the storage of perchlorate and the discharge of perchlorate.

The bill would require every owner of a perchlorate storage facility to pay ~~a~~ *an annual* fee of 6 cents for each pound of perchlorate stored in the facility *during the prior year*. The bill would ~~require~~ *authorize* the State Board of Equalization to collect the fee pursuant to the ~~Underground Storage Tank Maintenance Fee~~ *Fee Collection Procedures* Law. The bill would impose a state-mandated local program by requiring local entities to provide services in performing duties pursuant to that law in connection with the collection of the fee. Because a person who commits certain acts under that law is subject to a felony, the bill would impose a state-mandated local program by changing the definition of a crime.

The bill would subject the owner or operator of a storage facility that is required to submit information relating to perchlorate to the state board or to pay the facility fee to an administrative penalty of not less than \$500, or more than \$5,000, for each day of violation.

The bill would require the funds generated by the imposition of the fee, and the administrative penalties described above, to be deposited in the Perchlorate Pollution Prevention Fund, which the bill would establish in the State Treasury. The bill would authorize the state board to expend the money in the fund, upon appropriation by the Legislature, to carry out the purposes of the bill; *and* to pay for administrative costs; ~~and to carry out a loan program to assist private well owners and public water suppliers to pay for the cost of acquiring water to replace water~~

contaminated by perchlorate. The bill would require the state board to report every 3 months to the Legislature regarding the implementation of these provisions.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 8.5 (commencing with Section 13610) is added to Division 7 of the Water Code, to read:

CHAPTER 8.5. PERCHLORATE

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) “Fund” means the Perchlorate Pollution Prevention Fund established by Section 13614.5.

(b) Subject to Section 13610.5, “perchlorate storage facility” means a facility that stores over ~~375~~ 500 pounds of perchlorate in any calendar year.

13610.5. This chapter does not apply to a facility that stores perchlorate for retail purposes or for law enforcement purposes.

13611. (a) Except as provided by subdivision (b), any person who, without regard to intent or negligence, causes or permits perchlorate to be discharged in or on any waters of the state, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the state, shall, as soon as (1) that person has

1 knowledge of the discharge, (2) notification is possible, and (3)
2 notification can be provided without substantially impeding
3 cleanup or other emergency measures, immediately notify the
4 state board.

5 (b) The notification required by this section does not apply to
6 a discharge in compliance with this division.

7 (c) Any person who fails to provide the notice required by
8 subdivision (a) is guilty of a misdemeanor and shall be punished
9 by a fine of not less than five hundred dollars (\$500), or more than
10 five thousand dollars (\$5,000), for each day of failure to notify.

11 (d) Any penalties collected pursuant to subdivision (c) shall be
12 deposited in the fund.

13 13611.5. On or before January 1, 2005, an owner or operator
14 of a storage facility that has stored in any calendar year since
15 January 1, 1950, over ~~375~~ 500 pounds of perchlorate shall submit
16 to the state board, *to the extent feasible*, all of the following
17 information:

18 (a) The volume of perchlorate stored each year.

19 (b) The method of storage.

20 (c) Copies of documents relating to any monitoring undertaken
21 for potential leaks into the water bodies of the state.

22 ~~13612. (a) On or before June 1, 2004, the state board shall~~
23 ~~commence a field-based research program to determine the~~
24 ~~probability and environmental significance of discharges of~~
25 ~~perchlorate from past and present perchlorate storage facilities.~~

26 ~~(b) For the purposes of carrying out subdivision (a), the state~~
27 ~~board shall do all of the following:~~

28 ~~(1) Seek to identify the source and cause of perchlorate~~
29 ~~discharges and any past and present deficiencies with regard to~~
30 ~~storage practices.~~

31 ~~(2) Include peer view.~~

32 ~~(3) Complete the research program on or before June 1, 2007.~~

33 ~~(4) Use the results of the research program to recommend~~
34 ~~appropriate changes in design, construction, monitoring,~~
35 ~~operation, and maintenance requirements for perchlorate storage~~
36 ~~systems.~~

37 ~~(5) Make use of information supplied pursuant to Section~~
38 ~~13611.5.~~

39 ~~(6) Make the results of the field-based research program~~
40 ~~described in subdivision (a) available to the public.~~

~~13612.5.— On or before June 1, 2005, the state board shall adopt regulations to do both of the following:~~

~~(a) Require perchlorate storage facilities to meet minimum industry established training standards and to be operated in a manner consistent with industry established best management practices.~~

~~(b) Implement an outreach effort to educate owners and operators of perchlorate storage facilities on the importance of the regulations adopted pursuant to subdivision (a).~~

~~13613.—~~

13612. (a) Each regional board shall publish and make available to the public on or before June 1, 2005, a list of past and present perchlorate storage facilities within the region.

(b) Each regional board shall publish annually, and make available to all public water system operators within the region, a list of discharges of perchlorate occurring during the previous 12 months and a list of locations where perchlorate was detected in the groundwater within the region.

~~13613.5.—~~

(c) *On or before March 1, 2005, the state board shall provide the State Board of Equalization with a list of storage facilities in California.*

13613. (a) The owner or operator of a storage facility subject to Section 13611.5 or 13614 shall be liable for an administrative penalty of not less than five hundred dollars (\$500), or more than five thousand dollars (\$5,000), for each day of violation.

(b) In determining the administrative penalties imposed pursuant to this section, the state board or a regional board shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation, the period of time over which the violation occurred, the frequency of past violations, and the corrective action, if any, taken by the storage facility. The state board and regional board shall adopt procedures for the imposition of administrative penalties pursuant to this action, including procedures for notice and hearings.

(c) Any administrative penalties collected pursuant to subdivision (a) shall be deposited in the fund.

13614. (a) Every owner of a perchlorate storage facility shall pay a fee of six cents (\$0.06) for each pound of perchlorate stored

1 ~~in the facility. The fee imposed pursuant to this section shall be~~
2 ~~paid to the State Board of Equalization pursuant to Part 26~~
3 ~~(commencing with Section 50101) of Division 2 of the Revenue~~
4 ~~and Taxation Code.~~

5 ~~(b) The State Board of Equalization may adopt regulations to~~
6 ~~carry out this section, including, but not limited to, provisions~~
7 ~~governing collections, reporting, refunds, and appeals. in the~~
8 ~~storage facility during the prior calendar year.~~

9 ~~(b) The State Board of Equalization may collect the fee imposed~~
10 ~~by this section pursuant to the Fee Collection Procedures Law~~
11 ~~(Part 30 (commencing with Section 55001) of Division 2 of the~~
12 ~~Revenue and Taxation Code).~~

13 (c) The State Board of Equalization shall collect the fee
14 imposed by this section commencing on ~~April 1, 2004~~ July 1,
15 2005, and every July 1 thereafter.

16 (d) The State Board of Equalization shall deposit all fees
17 collected pursuant to this section in the fund.

18 13614.5. (a) The Perchlorate Pollution Prevention Fund is
19 hereby established in the State Treasury. From time to time, the
20 state board may modify existing accounts or establish accounts in
21 the fund that the state board determines are appropriate or
22 necessary for proper administration of this chapter.

23 (b) All of the following funds shall be deposited in the fund:

24 (1) Money appropriated by the Legislature for deposit in the
25 fund.

26 (2) Any interest earned upon the money deposited in the fund.

27 (3) Revenue generated pursuant to Section 13614—~~and~~
28 ~~subdivision (e) of Section 13615.~~

29 (4) Any administrative penalties collected by the state board or
30 regional board pursuant to this chapter.

31 (c) The state board may expend the money in the fund, upon
32 appropriation by the Legislature, ~~for all of the following purposes:~~

33 ~~(1) To to carry out the purposes of this chapter and to pay for~~
34 ~~the administrative costs of implementing this chapter.~~

35 ~~(2) To carry out a loan program pursuant to Section 13615.~~

36 ~~13615. (a) The state board shall carry out a loan program to~~
37 ~~assist private well owners and public water suppliers to pay for the~~
38 ~~cost of acquiring water that meets applicable state and federal~~
39 ~~standards to replace water contaminated by perchlorate.~~

1 ~~(b) The minimum amount that the state board may loan an~~
2 ~~applicant is ten thousand dollars (\$10,000), and the maximum~~
3 ~~amount is seven hundred fifty thousand dollars (\$750,000).~~

4 ~~(c) The term of the loan shall be for a maximum of 20 years if~~
5 ~~secured by real property, and for 10 years if not secured by real~~
6 ~~property. The interest rate for loans shall be set at the rate earned~~
7 ~~by the Surplus Money Investment Fund at the time of the loan~~
8 ~~commitment.~~

9 ~~(d) Loan funds may be used to finance up to 100 percent of the~~
10 ~~costs necessary to provide replacement water that meets applicable~~
11 ~~state and federal standards for drinking water.~~

12 ~~(e) The agency may charge a loan fee to loan applicants of up~~
13 ~~to 2 percent of the requested loan amount. The loan fee shall be~~
14 ~~deposited in the fund.~~

15 ~~13615.5.— The state board shall report at least once every three~~
16 ~~months with regard to the implementation of this chapter to the~~
17 ~~Senate Committee on Environmental Quality, the Senate~~
18 ~~Committee on Agriculture and Water, the Assembly Committee on~~
19 ~~Environmental Safety and Toxic Materials, and the Assembly~~
20 ~~Committee on Water, Parks and Wildlife.~~

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution for
23 certain costs that may be incurred by a local agency or school
24 district because in that regard this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 However, notwithstanding Section 17610 of the Government
31 Code, if the Commission on State Mandates determines that this
32 act contains other costs mandated by the state, reimbursement to
33 local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code. If the statewide cost of the
36 claim for reimbursement does not exceed one million dollars
37 (\$1,000,000), reimbursement shall be made from the State
38 Mandates Claims Fund.